

third parties and forward a copy of their claims file, along with recommendations on assertion, to the Judge Advocate General:

(a) *Certain Government contractors.* JAG approval is required before asserting an MCRA claim against a Federal Government contractor when the contract provides that the contractor will be indemnified or held harmless by the Federal Government for tort liability.

(b) *Foreign Governments.* JAG approval is required before asserting MCRA claims against foreign governments, their political subdivisions, Armed Forces members, or civilian employees.

(c) *U.S. personnel.* JAG approval is required before asserting MCRA claims against U.S. servicemembers, their dependents and employees of the United States, or their dependents for injury to another person.

§ 757.17 Statute of limitations.

(a) *Federal.* The United States, or the injured party on behalf of the United States, must file suit within 3 years after an MCRA action accrues. 28 U.S.C. 2415. Generally this is 3 years from the date of initial Federal treatment or Federal Government payment to a private care provider, whichever is first.

(b) *State.* Some State statutes of limitations may also apply where recovery is based on authority such as workers' compensation statutes, no-fault insurance statutes, no-fault medical payments, or uninsured motorist provisions of insurance contracts.

§ 757.18 Asserting the claim.

(a) *Initial action by JAG designee.* When advised of a potential MCRA claim, the JAG designee will determine the Federal agency or department responsible for investigating and asserting the claim.

(1) When the DON has reimbursed a non-Federal provider for health care or when CHAMPUS has made payment for a Navy health care beneficiary, the DON will assert any resulting MCRA claim.

(2) When care is provided in a Federal treatment facility, the status of the injured person will determine the agency

which will assert a resulting MCRA claim.

(i) Where Navy or Marine Corps members, retirees, or their dependents receive medical treatment from another Federal agency or department, the DON will usually assert any MCRA claim on behalf of the United States based on information provided by the treating agency or department.

(ii) Similarly, where a Navy MTF provides care to personnel of another Federal agency or department, that other agency or department will usually assert any claim on behalf of the United States.

(3) If the claim is not one which the DON should assert, the JAG designee will forward all available information to the appropriate department or agency.

(4) If the claim is one which the DON should assert, the JAG designee will ensure an appropriate investigation into the circumstances underlying the claim is initiated and will provide notice to the injured party and all third parties who may be liable to the injured person and the United States under the MCRA.

(b) *Investigating the claim.* While there is no prescribed form or content for investigating these claims, the claims file will contain sufficient information on which to base valuation, assertion, settlement, waiver, and/or compromise decisions. Usually the file will contain:

(1) Identification of each person involved in the incident including name, address, occupation, and nature of involvement;

(2) Police, social service, and other Federal, State and local agency reports on the incident;

(3) Completed copies of NAVJAG Form 5890/12³ or equivalent forms from other agencies and departments;

(4) Inpatient summaries and outpatients records of treatment of the involved injury in non-Federal facilities;

(5) Documents reflecting Federal payment for non-Federal treatment of the injured person;

(6) Calculations of the reasonable value of the Government's MCRA claim;

³See footnote 3 to § 757.2.

(7) Itemized repair bills or estimates of repair of damaged Federal Government property;

(8) Where an identified third-party tortfeasor is a uniformed servicemember or a U.S. employee, information and findings concerning that person's duty or scope of employment status at the time of the incident giving rise to the injury;

(9) Where an identified third-party tortfeasor is a uniformed servicemember or a U.S. employee or the dependent of a uniformed service member or U.S. employee, information and findings concerning whether that individual was grossly negligent or willfully culpable and whether that individual had insurance coverage at the time of the incident giving rise to the injury;

(10) Financial information on identified third-party tortfeasors including names and addresses of insurance carriers, insurance policy numbers, and extent of coverage; and

(11) A statement whether the injured person or his attorney will protect the interests of the United States.

(c) *Claims forwarded to JAG or DOJ.* In those cases where the file must be forwarded to JAG or DOJ, the file will also include:

(1) A summary of the case which includes the circumstances of the incident which caused the injury, the source, extent and value of medical care provided and a brief of the applicable law on the liability of the third party;

(2) Copies of all correspondence; and

(3) Recommended disposition.

(d) *Request for assistance in conducting investigation.* When an injury for which the DON may assert an MCRA claim occurs at a place where the DON does not have a command, unit, or activity conveniently located for conducting an inquiry into the circumstances underlying the injury, the NLSC activity or USSSO having responsibility for administering any resulting MCRA claim may request assistance from any other command, unit, or activity within the DOD. Such assistance may take the form of a complete inquiry into the circumstances underlying the incident or it may only cover part of the necessary inquiry and fact gathering. If a NLSC

activity or USSSO receives a similar request from another command, unit or activity within the DOD, every effort should be made to honor the request. Assistance will normally be provided without reimbursement from the requesting service.

(e) *Notice of claim.* (1) The JAG designee will assert appropriate MCRA claims by mailing, certified mail, return receipt requested, a notice of claim (SF 96) to identified third-party tortfeasors and their insurers, if known. Many insured tortfeasors fail to notify their insurance companies of incidents. This failure may be a breach of the cooperation clause in the policy and may be grounds for the insurer to refuse to defend the insured or be responsible for any liability. The United States, as a claimant, may preclude such an invocation by giving the requisite notification itself. The purpose of the insurance clause is satisfied if the insurer receives actual notice of the incident, regardless of the informant. This notice should be mailed as soon as it reasonably appears an identified third party may be liable for the injuries to the injured person. It is not necessary or desirable to delay mailing this notice until the completion of the investigation convened to inquire into the circumstances underlying the incident causing the injury. The prompt assertion of the claim will ensure that the Government is named on the settlement draft. If the United States is not so named, and the claim has been asserted, the insurer settles at its own risk.

(2) The JAG designee will also notify the injured person or his legal representative of the Government's interest in the value of the medical care provided by the United States. This notice will advise that:

(i) The United States may be entitled to recover the reasonable value of medical care furnished or paid for by the Federal Government;

(ii) The injured person is required to cooperate in the efforts of the United States to recover the reasonable value of medical care furnished or paid for by the Federal Government;

(iii) The injured person is required to furnish a statement regarding the circumstances surrounding the care and treatment;

(iv) The injured person may seek legal guidance concerning any possible claim for personal injury;

(v) The injured person is required to furnish information concerning legal action brought against any individual involved in the incident and provide the name of counsel representing the parties to such an action; and

(vi) The injured person should not execute a release or settle a claim arising from the incident causing the injury without first notifying the JAG designee.

(f) *Administering the claim.* (1) After investigating and asserting the claim, the JAG designee will maintain contact with all parties, their legal representatives, and insurers.

(2) An effort should be made to coordinate collection of the Federal Government's MCRA interest with the injured person's action to collect his own claim for damages.

(i) Attorneys representing an injured person may be authorized to include the Federal Government's MCRA claim as an item of special damages with the injured person's claim or suit.

(ii) An agreement that the Government's claim will be made a party of the injured person's action should be in writing and state that counsel fees will not be paid by the Government or computed on the basis of the Government's portion of recovery.

(3) If the injured person is not bringing an action for damages or is refusing to include the Federal Government's MCRA interest, the JAG designee will pursue independent collection. The United States is specifically allowed to intervene or join in any action at law brought by or through the injured person against the liable third person or bring an original suit in its own name or in the name of the injured person. The JAG designee will ensure all parties are aware that the United States must be a party to all subsequent collection negotiation.

(4) When the MCRA interests are not being represented by the injured person and independent collection efforts have failed, the JAG designee will request

JAG to refer the claim to the DOJ for possible suit. In such cases, the JAG designee will forward the complete file to JAG in accordance with §§ 757.18 (b) and (c).

(g) *Access to DON records and information.* (1) The medical records of the injured person will be released to the injured person or his legal representative upon request. This release will be without cost except in unusual circumstances. These records may not be released to anyone else outside the DON except in accordance with the provisions of the Privacy Act, 5 U.S.C. 552a. Usually such a release will require authorization from the injured individual or legal representative or an order from a court of competent jurisdiction. A clerk or attorney signed subpoena is not "an order from a court of competent jurisdiction."

(2) In appropriate cases, military health care providers who have examined or treated the injured person may be made available by their commands to testify regarding the medical care provided to the injured person. Requests for such testimony will be processed in accordance with DOD Directive 5405.2, 28 CFR part 725, and 32 CFR part 725, except when the injured party is asserting the Federal Government's MCRA claim as part of his action for damages. In that situation, the injured person or legal representative is considered also to be a representative of the United States and the foregoing regulations are not applicable. In such a case, the JAG designee may, if appropriate, request the command of an involved military health care provider to make the provider available for testimony on behalf of the injured person.

§ 757.19 Waiver and compromise.

(a) *General.* A JAG designee may authorize waiver or compromise of any MCRA claim under his authority which does not exceed \$40,000.00. A third party's liability for medical costs to the United States arising from a particular incident will be considered as a single claim in determining whether the claim is more than \$40,000.00 for the purpose of waiver and compromise. When the JAG designee considers waiver or compromise appropriate in a claim which exceeds \$40,000.00, the